

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF UTAH**

In the Matter of the Application of :  
AT&T BROADBAND PHONE OF :  
UTAH, LLC for a Certificate of Public :  
Convenience and Necessity to :  
Provide Switched and Dedicated, : Docket No. 01-2383-01  
Resold and Facilities-Based Local :  
Exchange and Resold and Facilities- :  
Based Interexchange Services with :  
the State of Utah

**DIRECT TESTIMONY**

**OF**

**WILLIAM DUNKEL**

**ON BEHALF OF THE COMMITTEE OF CONSUMER SERVICES**

**06 JANUARY 2003**

1 **I. INTRODUCTION AND STATEMENT OF QUALIFICATIONS**

2  
3 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

4 A. My name is William Dunkel. My business address is 8625 Farmington Cemetery Road,  
5 Pleasant Plains, Illinois 62677.

6  
7 **Q. WHAT IS YOUR PRESENT OCCUPATION?**

8 A. I am the principal of William Dunkel and Associates, which was established in 1980.  
9 Since that time, I have provided extensive consulting services in telephone regulatory  
10 proceedings throughout the country. I have participated in over 140 state regulatory  
11 telephone proceedings before over one-half of the state commissions in the United  
12 States. I specialize in cost analysis, rate design, jurisdictional separations, and  
13 depreciation studies.

14 **Q. HAVE YOU PREPARED AN APPENDIX THAT DESCRIBES YOUR**  
15 **QUALIFICATIONS?**

16 A. Yes. My qualifications are shown on Appendix A.

17  
18 **Q. ON WHOSE BEHALF ARE YOU TESTIFYING?**

19 A. I am testifying on behalf of the Utah Committee of Consumer Services (CCS).

20  
21 **Q. HAVE YOU PREVIOUSLY PARTICIPATED IN TELECOMMUNICATIONS**  
22 **PROCEEDINGS IN UTAH?**

1 A. Yes. I have participated on behalf of the CCS in many of Qwest's (also U.S. West  
2 Communications or Mountain Bell Telephone Company) proceedings in Utah. Specifically, I  
3 was involved in six general rate cases, Docket Numbers: 84-049-01; 88-049-07; 90-049-06/90-  
4 049-03; 92-049-07; 95-049-05; 97-049-08. I was also involved in the Qwest 800 Services case,  
5 Docket No. 90-049-05.

6  
7 **Q. WHAT IS THE PURPOSE OF THIS TESTIMONY?**

8 A. The purpose of this testimony is to respond to Qwest's September 30, 2002 Petition for  
9 Residential Pricing Flexibility and the October 25, 2002 Direct Testimony of Qwest's  
10 witness Mr. David L. Teitzel.

11  
12 **Q. IN ITS ORIGINAL PETITION IN THIS PROCEEDING QWEST PROPOSED THAT ITS**  
13 **WIRE CENTER BOUNDARIES BE THE GEOGRAPHIC AREA WHERE PRICING**  
14 **FLEXIBILITY IS IMPLEMENTED.<sup>1</sup> HAS QWEST MODIFIED ITS PROPOSAL?**

15 A. My understanding is that Qwest has agreed that pricing flexibility would be limited to just  
16 those areas where Qwest's and AT&T Broadband's service areas overlap.

17  
18 **II. A MAXIMUM ON PRICES IS NEEDED TO PROTECT RESIDENTIAL CUSTOMERS**  
19 **WHERE INSUFFICIENT COMPETITION EXISTS TO CONSTRAIN PRICES**  
20

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<sup>1</sup> Teitzel Direct, page 2.

1 **Q. HOW DOES THE UTAH PUBLIC TELECOMMUNICATIONS LAW ALLOW THE**  
2 **COMMISSION TO PROTECT THE PUBLIC INTEREST IN AREAS WHERE PRICING**  
3 **FLEXIBILITY IS IMPLEMENTED?**

4 A. The Utah Public Telecommunications Law ("Law") allows the Public Service  
5 Commission (Commission) to set a maximum price to protect the public interest. §54-  
6 8b-2.3(8) of the Law states:

7 The Commission may, as determined necessary to protect the public interest, set  
8 an upper limit on the price that may be charged by telecommunications  
9 corporations for public telecommunications services that may be priced by  
10 means of a price list or competitive contract.

11  
12 **Q. DOES THE CURRENT LAW ALLOW PRICING FLEXIBILITY TO BE**  
13 **"IMPLEMENTED" IN AN AREA, EVEN IF EFFECTIVE COMPETITION DOES NOT**  
14 **EXIST IN THAT AREA?**

15 A. Yes. Under the current Law, pricing flexibility can be implemented with no examination  
16 of whether effective competition exists in that geographic area. 54-8b-2.3(2)(iii) of the  
17 Law states that the following conditions need to be met in order for pricing flexibility to  
18 become 'effective':

- 19  
20 (A) the Commission has issued a certificate to the competing  
21 telecommunications corporation;  
22  
23 (B) the competing telecommunications corporation has begun providing the  
24 authorized public telecommunications service in the defined geographic  
25 area;  
26  
27 (C) the incumbent telephone corporation, by written agreement, stipulation, or  
28 pursuant to an order of the commission, has allowed the competing  
29 telecommunications corporation to interconnect with the essential facilities  
30 and to purchase essential services of the incumbent telephone  
31 corporation; and  
32

1 (D) the incumbent telephone corporation is in substantial compliance with the  
2 rules and orders of the Commission as issued under Section 54-8b-2.2.  
3 (Interconnection)  
4  
5

6 Since the law does not require effective competition to exist prior to the implementation  
7 of price flexibility, a maximum price is needed to protect the public interest in areas  
8 without effective competition. Other than the maximum price provision, the Law does  
9 not provide Utah residential customers with any protection from price increases in these  
10 areas where effective competition does not exist.  
11

12 **Q. WHEN DOES EFFECTIVE COMPETITION EXIST?**

13 A. The Commission's 2002 Report to the Governor and Legislature on the Status of  
14 Telecommunications Competition in Utah (2002 Report) refers to the Herfindahl-  
15 Hirschman Index ("HHI") and states:

16 An index value of .50 is the necessary threshold value for the market to begin to  
17 be considered somewhat competitive.<sup>2</sup> (emphasis added)  
18  
19

20 An HHI of .50 equates to a Qwest market share of approximately 50% if there is one  
21 competitor, and about 65%<sup>3</sup> or higher if there are two or more competitors.<sup>4</sup> This issue  
22 is further addressed in Mr. Regan's testimony.  
23  
24

25 **Q. HAS THE COMMISSION RELIED ON THE HHI TO MEASURE THE LEVEL**  
26 **OF EFFECTIVE COMPETITION?**

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<sup>2</sup>"The Status of Telecommunications Competition In Utah", November 2002, page 13.

<sup>3</sup> "The Status of Telecommunications Competition In Utah", November 2002, page 14.

<sup>4</sup> One competitor  $(50\%)^2 + (50\%)^2 = .25 + .25 = .50$ . An example of Qwest and two other competitors.  
 $(65\%)^2 + (25\%)^2 + (10\%)^2 = .4225 + .0625 + .01 = .495$ .

1 A. Yes. The Commission has relied on the HHI index to test for the presence of effective  
2 competition. For example, on page 13 of its Report to the Governor and Legislature it  
3 states:

4 Courts and federal agencies acknowledge the existence of market power when a  
5 firm has the ability and incentive to raise or maintain prices above competitive  
6 levels or to achieve other anticompetitive effects. Two economic measures used  
7 to evaluate market power are the Herfindahl-Hirschman Index ("HHI") and the  
8 Effective Firm Index. Both can be used to judge the level of competition in the  
9 industry. (emphasis added)  
10  
11

12 **Q. WHAT HHI IS NEEDED FOR THE MARKET TO “BEGIN TO BE CONSIDERED**  
13 **SOMEWHAT COMPETITIVE?”**

14 A. The Commission's 2002 Report indicates that the HHI must be at .50 or below for the  
15 market to “begin to be considered somewhat competitive”. As stated on, page 13 of  
16 the Commission's 2002 Report:

17 HHI measures market concentration by squaring the market share of each firm  
18 competing in the market and summing the results. The HHI increases as the  
19 number of firms in the market decreases and as the disparity in size between  
20 those firms increases. An index value of .50 is the necessary threshold value for  
21 the market to begin to be considered somewhat competitive. (emphasis added)  
22

23 According to page 14 of the Commission's 2002 Report, in 2002 the HHI is .853 for the  
24 overall residential market in Qwest's service areas. Thus the overall residential market  
25 in Utah has not begun “to be considered somewhat competitive”.  
26

27 **Q. IS THE HHI USED BY OTHER GOVERNMENT AGENCIES?**

28 A. Yes, as discussed in Mr. Regan's testimony, the HHI is used by the U.S. Department of  
29 Justice and the Federal Trade Commission to measure market concentration. If a small

1 number of providers hold a large share of the market, that results in a higher market  
2 concentration, and a higher HHI value. As stated in the Commission Report previously  
3 quoted, in those markets with high concentration, firms are able to "raise or maintain  
4 prices above competitive levels, or to achieve other anticompetitive effects."

5  
6 **Q. THE COMMISSION'S REPORT ALSO MENTIONS THE "EFFECTIVE FIRM INDEX".**  
7 **WHAT IS THAT?**

8 A. The "Effective Firm Index" is calculated using the HHI. Therefore, if the HHI condition is  
9 met, the "Effective Firm Index" condition will also be met.<sup>5</sup>

10  
11 **Q. DOES THE EXISTENCE OF AN ALTERNATIVE PROVIDER WITH A SMALL**  
12 **MARKET SHARE IN A GEOGRAPHIC AREA MEAN THAT THE AREA IS**  
13 **NECESSARILY EFFECTIVELY COMPETITIVE?**

14 A. No. As the Commission stated on page 11 of its Report to the Governor and  
15 Legislature, "It is not just the number of carriers in each telecommunications market that  
16 defines competition, but also market shares and perceived quality of service."

17  
18 As discussed in Mr. Regan's testimony, this situation is well described in a standard  
19 economics textbook:

20  
21 *Oligopoly.* Whether or not there is identity of products or some differentiation, if  
22 there are but two, three, or a few sellers, they may come to realize that their  
23 prices are closely interrelated. If Corporation A cuts its price, it can win much

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<sup>5</sup>As discussed on page 14 of the Commission's Report, the Effective Firm Index is the inverse of the HHI.

business from its rivals. It knows this. They know this. Is it reasonable for A to proceed on the assumption that its rivals will stand by passively while it takes away their business? Not really. A will guess, or may soon learn from experience, that when it cuts its price, its rivals tend to meet or to exceed such a price cut. Economic warfare may result, until the few sellers come to realize that they are in the same boat together.

Back in the old days before the antitrust laws were important, such oligopolists might have formed a merger, or a tight little cartel or trust. Meeting at celebrated dinners, such as those that Judge Gary of the United States Steel Company held decades ago, the sellers would collusively set some kind of a monopoly price. A full monopoly price? Sometimes, if they were sure they could keep newcomers out. But in the more realistic case where the oligopolists had to take account of the fact that setting a high price would tempt new rivals into their field, they would agree on a price higher than the purely competitive one but would moderate their charges for fear of new entry.

Today it would be illegal in the United States, and a few other countries, for cartels to set prices collusively and shamelessly to maximize their mutual profits. On the other hand, if a few large firms encounter the same problem, experience suggests that they may - without ever meeting, phoning, winking, or corresponding - arrive at a tacit mode of behavior that avoids fierce price competition. With or without a price leader, the sellers may be quoting rather similar prices - prices which come nowhere near the level of MC, as in the case of a perfectly competitive industry discussed in Chapter 22.<sup>6</sup>(citation omitted)

In an oligopolistic market structure, therefore, the sellers will soon learn that their prices are interrelated. They learn that price competition is simply not in their best interests. Because this is the general nature of markets with high concentration, a maximum price is needed to protect the public from oligopolistic pricing behavior.

**Q. HOW DO THE AT&T BROADBAND PRICES FOR RESIDENTIAL BASIC EXCHANGE SERVICE COMPARE TO QWEST'S PRICES?**

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<sup>6</sup>Economics: An Introductory Analysis by Paul A. Samuelson, Sixth Edition, pp. 492-493.



1 A. Qwest charges \$14.48 per month for flat rate residential basic exchange service.<sup>7</sup> The  
2 AT&T Digital Phone Service price is \$14.25 per month for the same service.<sup>8</sup>  
3 Therefore, AT&T charges almost the same price as Qwest for flat rate residential basic  
4 exchange service.

5  
6 **Q. IS IT REASONABLE TO EXPECT THAT AT&T BROADBAND WILL PROTECT UTAH**  
7 **RESIDENTIAL CUSTOMERS FROM PRICE INCREASES?**

8 A. No. Anyone who has paid an AT&T cable bill for an extended period of time knows that  
9 AT&T frequently raises its cable TV rates. According to published reports, AT&T raised  
10 its cable TV rates by as much as 25% between June 2000 and June 2001.<sup>9</sup> According  
11 to the Consumers Union, which publishes the magazine Consumer Reports, nationwide  
12 cable television rates increased 44.7% between February 1996 and July 2002. Inflation  
13 rose only 16.5% over that same period, according to data from the U.S. Bureau of Labor  
14 Statistics.<sup>10</sup> Experience indicates that we should not depend upon the cable TV  
15 company to oppose or limit price increases. Expecting the cable TV company to protect  
16 customers from price increases is like having the fox guard the hen house.

17  

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<sup>7</sup>\$9.23 for Dial Tone Line (Qwest Exchange and Network Services Tariff §5.2.3), \$1.80 for flat rate local usage (Qwest Exchange and Network Services Tariff §5.2.4) and \$3.45 for flat rate Extended Area Service (EAS) in Salt Lake City (Qwest Exchange and Network Services Tariff §5.1.1).

<sup>8</sup> Local service and unlimited local calling, including the same EAS areas as Qwest. See page 5 of Exhibit DLT-6.

<sup>9</sup> "Utah Coalition for Competitive Telecommunications Says Competition Would Protect Consumers from AT&T Monopolistic Price Increases", published by the Utah Coalition for Competitive Telecommunications, released June 4, 2001.

<sup>10</sup> "Cable Price Hikes, Broken Promises Prompt Call for New Oversight", Utah AccessTV Weekly News Briefs, July 29, 2002, featured link #18.

1 **Q. HOW COULD AT&T BROADBAND REACT TO QWEST ANNOUNCING A**  
2 **RESIDENTIAL PRICE INCREASE IN AREAS THAT ARE GRANTED PRICING**  
3 **FLEXIBILITY?**

4 A. If Qwest were to announce a planned increase in residential rates, there are two major  
5 ways AT&T Broadband could react to such a price increase:

6  
7 1) One possibility would be that AT&T Broadband would maintain its current prices,  
8 thereby creating a larger differential between Qwest's and AT&T Broadband's prices.  
9 Since this may cause some Qwest customers to switch to AT&T Broadband's services,  
10 Qwest could cancel the price increase. Neither Qwest nor AT&T Broadband would gain  
11 from this, so they will learn that this sequence of events did not benefit them.

12  
13 2) Another possibility is that AT&T Broadband would follow Qwest's lead by increasing  
14 its own residential prices. Under this possibility, there would be no increased incentive  
15 for customers to switch from Qwest to AT&T Broadband. Therefore, Qwest would likely  
16 proceed with its plan to increase residential prices. Under this scenario, both Qwest  
17 and AT&T Broadband would receive higher revenues, while neither would experience  
18 any loss of market share as a result of the price increases.

19  
20 As discussed in Mr. Regan's Testimony in a highly concentrated oligopoly market,  
21 prices above competitive levels are sustainable, since the few competing firms  
22 understand that price wars are not beneficial to them.

1 If no maximum price is established, this will open the door to Qwest and the cable TV  
2 company implementing similar residential telephone price increases to the detriment of  
3 Utah residential customers. Without a maximum price, there is nothing to stop this from  
4 happening.

5  
6 **Q. DOES QWEST HAVE FINANCIAL PROBLEMS?**

7 A. Yes. The merger of U S West Communications and Qwest several years ago resulted  
8 in U S West (the local exchange company) assuming a very large debt primarily to  
9 acquire the long distance provider Qwest. The combined company also adopted the  
10 Qwest name.

11  
12 Page 12 of the Commission's 2002 Report highlights Qwest's current financial  
13 difficulties:

14 Qwest Communications International Inc., the nations fourth-largest phone  
15 company, is struggling under \$26 billion in debt. Much of this debt was acquired  
16 on the non-local side of the Qwest company. Qwest is now attempting to pay it  
17 down.

18  
19  
20 Qwest has resorted to drastic measures to reduce this massive debt. For example,  
21 Qwest placed its profitable directory business up for sale to reduce some of this debt.

22 As stated in a recent published report:

23 The speed with which Qwest Communications International, Inc. will be able to  
24 pocket an expected \$7.05 billion from the sale of its directory business will  
25 depend on decisions being made now in several key Western states.  
26

1 On Wall Street, the sale is viewed a crucial to Qwest's effort to avoid defaulting  
2 on its bank loans. Any misstep could force Qwest to restructure its huge debt  
3 load under the protection of a bankruptcy court.<sup>11</sup>  
4  
5

6 **Q. SHOULD QWEST AND THE CABLE TV COMPANY BE ALLOWED TO RAISE**  
7 **RESIDENTIAL TELEPHONE PRICES?**

8 A. No. Because of its large debt load caused mostly by past acquisitions and/or mergers,  
9 Qwest is in great need of money. Recent experience does not indicate the cable TV  
10 company is opposed to price increases. Residential customers in Utah should not be  
11 forced to bear the brunt of financial problems caused by past mergers or acquisitions.  
12 Unless the residential customers are protected by a maximum price on their telephone  
13 service, Qwest and the cable TV company will be allowed to force Utah ratepayers,  
14 rather than stockholders, to shoulder the responsibility of recouping at least part of  
15 Qwest's massive debt obligations. A maximum price is needed to protect residential  
16 consumers from the pressure Qwest is now under to generate additional revenues.

17  
18  
19 **Q. WHAT SHOULD THE COMMISSION DO TO PROTECT UTAH RESIDENTIAL**  
20 **CUSTOMERS IN THE AREAS THAT MEET THE PRICE FLEXIBILITY STANDARDS,**  
21 **BUT THERE IS NOT YET EFFECTIVE COMPETITION TO PROTECT CONSUMERS**  
22 **FROM UNWARRANTED "OLIGOPOLISTIC" PRICE INCREASES?**

23 A. The law allows the Commission to establish a maximum price.<sup>12</sup> The CCS proposes  
24 that the Commission establish maximum prices for residential services in any area

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<sup>11</sup>"Qwest to Get \$7B for QwestDex; Speed of Sale Depends on States", Telecommunications Reports, August 26, 2002, page 7.

<sup>12</sup> §54-8b-2.3(8) of the Utah Public Telecommunications Law ("Law").

1 where pricing flexibility is granted, until Qwest can demonstrate that effective  
2 competition exists in a particular area. The maximum price should be set at the current  
3 tariffed price. The maximum price would remain in effect for a flexibly priced area, at  
4 least until Qwest can demonstrate that the HHI for that area is at or below .50 (the level  
5 the Commission has stated as necessary for the market to begin to be considered  
6 somewhat competitive).

7  
8 Under the CCS proposal, customers would be protected from price increases in those  
9 areas where effective competition does not exist. That protection would continue at  
10 least until Qwest can demonstrate that effective competition exists in the flexibly priced  
11 area.

12  
13 **Q. HOW WOULD THE HHI BE CALCULATED IN THE FLEXIBLY PRICED**  
14 **AREAS?**

15 A. As discussed above, the HHI is calculated by summing the squares of the market  
16 shares of the competitor's service area. Therefore, the HHI for each flexibly priced area  
17 would be calculated by the following formula:

$$(Qwest \% \text{ of total lines in that area})^2 + (AT\&T \text{ Broadband } \% \text{ of total lines that area})^2 = HHI$$

18  
19  
20  
21  
22 For example, assume that there are a total of 10,000 lines in a particular geographic  
23 area. Assume also that of these 10,000 lines, 9,000 lines are served by Qwest and  
24 AT&T Broadband serves the other 1,000 lines.

The HHI would be calculated as follows:

$$\frac{9,000}{10,000} \text{ squared} + \frac{1,000}{10,000} \text{ squared} = .81 + .01 = .82 \text{ HHI.}$$

In the above hypothetical example, the HHI for the service area is .82, which means that the level of concentration in the market is above the level where the market begins to be considered somewhat competitive. Therefore, since effective competition does not exist in this service area, price flexibility in that area would be subject to a maximum price equal to the current tariffed price.

**III. QWEST'S RESIDENTIAL TELEPHONE SERVICE IS PRICED ABOVE ITS PRICE FLOOR**

**Q. ON PAGE 22 OF HIS DIRECT TESTIMONY, MR. TEITZEL CLAIMS THAT RESIDENTIAL TELEPHONE SERVICE IS PRICED BELOW ITS PRICE FLOOR. IS MR. TEITZEL'S CLAIM ACCURATE?**

A. No. Qwest generally includes 100% of the loop in its claimed residential basic exchange service cost or floor, which is improper. On the other hand, Qwest does not include any loop in the "floor" of toll, switched access or vertical services. The Utah law specifies that the price floor is equal to the sum of (a) the TSLRIC of "non-essential facilities" and (b) the price of "essential facilities" used to provide the service. According to §54-8b-3.3(3) of the Utah Law:

(3) An incumbent telephone corporation may not price any public

telecommunications service at a level which is less than the sum of:

- (a) the total service long-run incremental cost of nonessential facilities **used** to provide the public telecommunications service in a particular geographic area; and
- (b) the price of essential facilities **used** to provide the public telecommunications service in a particular defined geographic area.  
(emphases added)

The problem is that Qwest does not follow this requirement in its treatment of the loop facility. Part of the time the loop is **used** for toll service. At other times the same loop is **used** for switch access service<sup>13</sup>. At other times it is **used** for local service. Sometimes it is **used** for vertical services.

Although it is undisputed that toll service uses the loop, Qwest ignores that fact when calculating the “floor” for toll service. Likewise when calculating the floor of switched access services, Qwest ignores the fact that switched access uses the loop facility.

Even during the times the loop is being used for toll or access service, Qwest effectively pretends it is being used for local basic service, which is simply not true. During the time when the loop is being used for a toll call, it is not and cannot also be used for a local call.

#### **Q. DO MANY SERVICES USE AND SHARE THE LOOP FACILITY?**

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<sup>13</sup> Under “switched access” an IXC (such as AT&T, MCI, etc...) uses Qwest’s loop to connect the IXC’s toll call to or from the premise.

1 A. Yes. As shown on Exhibit WDA-1, the family of Qwest's services that share the Qwest  
2 loop includes intrastate and interstate toll services, vertical services, intrastate and  
3 interstate switched access service, and basic local service. Exhibit WDA-1 shows the  
4 facilities used to provide each of these services. Thus, the loop is a facility that is used  
5 for almost every switched telecommunications service that Qwest provides.

6  
7 **Q. HAS THIS COMMISSION PREVIOUSLY FOUND THAT IT IS INAPPROPRIATE TO**  
8 **ASSIGN THE FULL COST OF THE LOOP FACILITY TO BASIC LOCAL SERVICE?**

9 A. Yes. In numerous prior Orders, this Commission has repeatedly found that it is  
10 inappropriate to assign the entire costs of the loop facility to residential basic exchange  
11 service. The Commission specifically found:

12  
13 We are troubled by the Company's failure to take into account  
14 Commission past orders which deal with some of the pivotal issues  
15 and assumptions which go into the calculation of TSLRIC. One  
16 failure, in particular, is the Company's decision to assign all costs  
17 of access lines to basic residential service...The Commission has  
18 already rejected the Company's premise that the only purpose of  
19 access lines, the local loop, is for the customer to obtain a dial tone  
20 or local service. Without the local loop, the end user would not  
21 have access to switched access products or use of toll services.<sup>14</sup>  
22

23 In a 1997 decision this Commission again found:

24  
25 In Docket No. 95-049-05, we stated: "Exchange access supports  
26 and is inseparable from all uses made of the telecommunication  
27 network."<sup>15</sup>  
28

29 and,

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<sup>14</sup>US West Communications, Inc Docket No. 95-049-05, Report and Order, page 95 (Issued November 6, 1995).

<sup>15</sup> US West Communications, Inc Docket No. 97-049-08, Report and Order, page 68-69 (Issued December 4, 1997).



1  
2 We do not alter this allocation decision, though the Company,  
3 AT&T, and MCI argue against it. They endeavor to drive 100  
4 percent recovery of local loop costs to local exchange access and  
5 completely away from intrastate toll and switched access. For  
6 reasons made clear in previous docket orders, we do not change  
7 the allocation.<sup>16</sup>  
8  
9

10 **Q. DOES THE TELECOMMUNICATIONS ACT PROHIBIT RECOVERING 100% OF THE**  
11 **LOOP FROM RESIDENTIAL BASIC EXCHANGE SERVICE?**

12 A. Yes. The Federal Telecommunications Act of 1996 (TA96) requires that residential  
13 basic exchange service bear no more than a reasonable share of the joint and common  
14 costs of facilities used to provide those services.

15 The TA96 specifically states:

16 Section 254(k)--SUBSIDY OF COMPETITIVE SERVICES PROHIBITED.--A  
17 telecommunications carrier may not use services that are not competitive to  
18 subsidize services that are subject to competition. The Commission, with  
19 respect to interstate services, and the States, with respect to intrastate services,  
20 shall establish any necessary cost allocation rules, accounting safeguards, and  
21 guidelines to ensure that services included in the definition of universal service  
22 bear no more than a reasonable share of the joint and common costs of facilities  
23 used to provide those services.  
24  
25

26 In an Order dated October 28, 1998, the Indiana Utility and Regulatory Commission  
27 (IURC) specifically found that assigning 100% of the loop cost to one service would  
28 violate Section 254(k) of TA96. It found the loop was "included in the definition of  
29 common and joint costs." The IURC found that,

30 For purposes of resolving 'takings' claims and 'a reasonable share of the joint  
31 and common costs of facilities used to provide those services,' the loop must,  
32 therefore, be included in the definition of common and joint costs in order to  
33 determine confiscation claims and to be in compliance with the second sentence

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<sup>16</sup> US West Communications, Inc Docket No. 97-049-08, Report and Order, page 69 (Issued December 4, 1997).

1 of Section 254(k). We find that the direct assignment of 100 percent of the loop  
2 costs to any one service would be a violation of the second sentence of Section  
3 254(k).<sup>17</sup>  
4

5 **Q. QWEST'S PETITION FOR RESIDENTIAL PRICING FLEXIBILITY FOCUSES ON THE**  
6 **AREAS WHERE AT&T BROADBAND PROVIDES RESIDENTIAL BASIC**  
7 **EXCHANGE SERVICE. IS IT REASONABLE TO BELIEVE THAT AT&T**  
8 **BROADBAND WOULD PROVIDE SERVICE PRICES WHICH ARE BELOW COST?**

9 A. No. AT&T Broadband is under no obligation to provide residential basic exchange  
10 service in Utah. Therefore, it would be unreasonable to believe that AT&T Broadband  
11 would provide services at prices that are below the cost of providing those services to  
12 customers. As previously discussed, AT&T broadband charges a few pennies less for  
13 residential basic exchange service than Qwest does. The obvious conclusion is that  
14 Qwest's residential basic exchange service is, in fact, priced above its cost.  
15

16 **Q. WHAT DOES THE CCS PROPOSE?**

17 A. For those areas where AT&T Broadband and Qwest's service areas overlap, price  
18 flexibility should be implemented with a maximum price equal to the current tariffed  
19 price level. When Qwest can at least demonstrate that the HHI in a specific area is at or  
20 below .50, it can petition the Commission to remove the maximum price requirement.  
21

22 **Q. UNDER THE CCS MAXIMUM PRICE PROPOSAL, WOULD REGULATION IN THESE**  
23 **AREAS BE DIFFERENT THAN IT IS NOW?**

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<sup>17</sup>Indiana Utility Regulatory Commission Order, Cause No. 40785, Section V.(C) Common and Joint Costs, Issued October 28, 1998.

1 A. Yes. First of all, the maximum residential price in these areas would not change with  
2 future alternative regulation price cap changes. The price index formula produces  
3 change based upon productivity and inflation.<sup>18</sup> In recent years those have generally  
4 been reductions in the price index. The flexibly priced areas would not participate in  
5 future price index changes.

6

7 In addition, once these areas have effective competition, Qwest can seek removal of the  
8 maximum price.

9

10 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

11 A. Yes.

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<sup>18</sup> “The Status of Telecommunications Competition in Utah”, November 2002, Page 6.

William Dunkel, Consultant

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Qualifications

The Consultant is a consulting engineer specializing in telecommunication regulatory proceedings. He has participated in over 140 state regulatory proceedings as listed on the attached Relevant Work Experience.

The Consultant has provided cost analysis, rate design, jurisdictional separations, depreciation, expert testimony and other related services to state agencies throughout the country in numerous telecommunication state proceedings. The Consultant has also provided depreciation testimony to state agencies throughout the country in several electric utility proceedings.

The Consultant made a presentation pertaining to Video Dial Tone at the NASUCA 1993 Mid-Year Meeting held in St. Louis.

In addition, the Consultant also made a presentation to the NARUC Subcommittee on Economics and Finance at the NARUC Summer Meetings held in July, 1992. That presentation was entitled "The Reason the Industry Wants to Eliminate Cost Based Regulation--Telecommunications is a Declining Cost Industry."

The Consultant provides services almost exclusively to public agencies, including the Public Utilities Commission, the Public Counsel, or the State Department of Administration in various states.

William Dunkel currently provides, or in the past has provided, services in telecommunications proceedings to the following clients:

The Public Utility Commission or the Staffs in the States of:

Arkansas	Mississippi
Arizona	Missouri
Delaware	New Mexico
Georgia	Utah
Guam	Virginia
Illinois	Washington
Maryland	U.S. Virgin Islands

The Office of the Public Advocate, or its equivalent, in the States of:

Colorado	Maryland
District of Columbia	Missouri
Georgia	New Jersey
Hawaii	New Mexico
Illinois	Ohio
Indiana	Pennsylvania
Iowa	Utah
Maine	Washington

The Department of Administration in the States of:

Illinois  
Minnesota

South Dakota  
Wisconsin

In April, 1974, the Consultant was employed by the Illinois Commerce Commission in the Electric Section as a Utility Engineer. In November of 1975, he transferred to the Telephone Section of the Illinois Commerce Commission and from that time until July, 1980, he participated in essentially all telephone rate cases and other telephone rate matters that were set for hearing in the State of Illinois. During that period, he testified as an expert witness in numerous rate design cases and tariff filings in the areas of rate design, cost studies and separations. During the period 1975-1980, he was the Separations and Settlements expert for the Staff of the Illinois Commerce Commission.

From July, 1977 until July, 1980, he was a Staff member of the FCC-State Joint Board on Separations, concerning the "Impact of Customer Provision of Terminal Equipment on Jurisdictional Separations" in FCC Docket No. 20981 on behalf of the Illinois Commerce Commission. The FCC-State Joint Board is the national board which specifies the rules for separations in the telephone industry.

The Consultant has taken the AT&T separations school which is normally provided to the AT&T personnel.

The Consultant has taken the General Telephone separations school which is normally provided for training of the General Telephone Company personnel in separations.

Since July, 1980 he has been regularly employed as an independent consultant in telephone rate proceedings across the nation.

He has testified before the Illinois House of Representatives Subcommittee on Communications, as well as participating in numerous other schools and conferences pertaining to the utility industry.

Prior to employment at the Illinois Commerce Commission, the Consultant was a design engineer for Sangamo Electric Company designing electric watt-hour meters used in the electric utility industry. The Consultant was granted patent No. 3822400 for a solid state meter pulse initiator.

The Consultant graduated from the University of Illinois in February, 1970 with a Bachelor's of Science Degree in Engineering Physics with emphasis on economics and other business-related subjects. The Consultant has taken several post-graduate courses since graduation.

RELEVANT WORK EXPERIENCE OF  
WILLIAM DUNKEL

ARIZONA

- U.S. West Communications  
Cost of Service Study  
Docket No. T-00000A-00-0194  
General rate case  
Docket No. E-1051-93-183  
Depreciation case  
Docket No. T-01051B-97-0689  
General rate case  
Docket No. T-01051B-99-0105

ARKANSAS

- Southwestern Bell Telephone Company  
Docket No. 83-045-U

CALIFORNIA

- (on behalf of the California Cable Television Association)
- General Telephone of California  
I.87-11-033
- Pacific Bell  
Fiber Beyond the Feeder Pre-Approval  
Requirement

COLORADO

- Mountain Bell Telephone Company  
General Rate Case  
Docket No. 96A-218T et al.  
Call Trace Case  
Docket No. 92S-040T  
Caller ID Case  
Docket No. 91A-462T  
General Rate Case  
Docket No. 90S-544T  
Local Calling Area Case  
Docket No. 1766  
General Rate Case  
Docket No. 1720  
General Rate Case  
Docket No. 1700  
General Rate Case  
Docket No. 1655  
General Rate Case  
Docket No. 1575  
Measured Services Case  
Docket No. 1620
- Independent Telephone Companies  
Cost Allocation Methods Case  
Docket No. 89R-608T

DELAWARE

- Diamond State Telephone Company  
General Rate Case  
PSC Docket No. 82-32  
General Rate Case  
PSC Docket No. 84-33  
Report on Small Centrex  
PSC Docket No. 85-32T  
General Rate Case  
PSC Docket No. 86-20  
Centrex Cost Proceeding  
PSC Docket No. 86-34

DISTRICT OF COLUMBIA

- C&P Telephone Company of D.C.  
Depreciation issues  
Formal Case No. 926

FCC

- Review of jurisdictional separations  
FCC Docket No. 96-45
- Developing a Unified Inter-carrier  
Compensation Regime  
CC Docket No. 01-92

FLORIDA

- BellSouth, GTE, and Sprint  
Fair and reasonable rates Undocketed Special Project

GEORGIA

- Southern Bell Telephone & Telegraph Co.  
General Rate Proceeding Docket No. 3231-U  
General Rate Proceeding Docket No. 3465-U  
General Rate Proceeding Docket No. 3286-U  
General Rate Proceeding Docket No. 3393-U

HAWAII

- GTE Hawaiian Telephone Company  
Depreciation/separations issues Docket No. 94-0298  
Resale case Docket No. 7702

ILLINOIS

- Geneseo Telephone Company  
EAS case Docket No. 99-0412
- Central Telephone Company  
(Staunton merger) Docket No. 78-0595
- General Telephone & Electronics Co.  
Usage sensitive service case Docket Nos. 98-0200/98-0537  
General rate case (on behalf of CUB) Docket No. 93-0301  
(Usage sensitive rates) Docket No. 79-0141  
(Data Service) Docket No. 79-0310  
(Certificate) Docket No. 79-0499  
(Certificate) Docket No. 79-0500
- General Telephone Co. Docket No. 80-0389
- Ameritech (Illinois Bell Telephone Company)  
Alternative Regulation Review Docket No. 98-0252  
Area code split case Docket No. 94-0315  
General Rate Case Docket No. 83-0005  
(Centrex filing) Docket No. 84-0111  
General Rate Proceeding Docket No. 81-0478  
(Call Lamp Indicator) Docket No. 77-0755  
(Com Key 1434) Docket No. 77-0756  
(Card dialers) Docket No. 77-0757  
(Concentration Identifier) Docket No. 78-0005  
(Voice of the People) Docket No. 78-0028  
(General rate increase) Docket No. 78-0034  
(Dimension) Docket No. 78-0086  
(Customer controlled Centrex) Docket No. 78-0243  
(TAS) Docket No. 78-0031  
(Ill. Consolidated Lease) Docket No. 78-0473  
(EAS Inquiry) Docket No. 78-0531  
(Dispute with GTE) Docket No. 78-0576  
(WUI vs. Continental Tel.) Docket No. 79-0041  
(Carle Clinic) Docket No. 79-0132  
(Private line rates) Docket No. 79-0143  
(Toll data) Docket No. 79-0234  
(Dataphone) Docket No. 79-0237

(Com Key 718)	Docket No. 79-0365
(Complaint - switchboard)	Docket No. 79-0380
(Porta printer)	Docket No. 79-0381
(General rate case)	Docket No. 79-0438
(Certificate)	Docket No. 79-0501
(General rate case)	Docket No. 80-0010
(Other minor proceedings)	Docket No. various
- Home Telephone Company	Docket No. 80-0220
- Northwestern Telephone Company	
Local and EAS rates	Docket No. 79-0142
EAS	Docket No. 79-0519
<u>INDIANA</u>	
- Public Service of Indiana (PSI)	
Depreciation issues	Cause No. 39584
- Indianapolis Power and Light Company	
Depreciation issues	Cause No. 39938
<u>IOWA</u>	
- U S West Communications, Inc.	
Local Exchange Competition	Docket No. RMU-95-5
Local Network Interconnection	Docket No. RPU-95-10
General Rate Case	Docket No. RPU-95-11
<u>KANSAS</u>	
- Southwestern Bell Telephone Company	
Commission Investigation of the KUSF	Docket No. 98-SWBT-677-GIT
- Rural Telephone Service Company	
Audit and General rate proceeding	Docket No. 00-RRLT-083-AUD
Request for supplemental KUSF	Docket No. 00-RRLT-518-KSF
- Southern Kansas Telephone Company	
Audit and General rate proceeding	Docket No. 01-SNKT-544-AUD
- Pioneer Telephone Company	
Audit and General rate proceeding	Docket No. 01-PNRT-929-AUD
- Craw-Kan Telephone Cooperative, Inc.	
Audit and General rate proceeding	Docket No. 01-CRKT-713-AUD
- Sunflower Telephone Company, Inc.	
Audit and General rate proceeding	Docket No. 01-SFLT-879-AUD
- Bluestem Telephone Company, Inc.	
Audit and General rate proceeding	Docket No. 01-BSST-878-AUD
- Home Telephone Company, Inc.	
Audit and General rate proceeding	Docket No. 02-HOMT-209-AUD
- Wilson Telephone Company, Inc.	
Audit and General rate proceeding	Docket No. 02-WLST-210-AUD
- S&T Telephone Cooperative Association, Inc.	
Audit and General rate proceeding	Docket No. 02-S&TT-390-AUD
- Blue Valley Telephone Company, Inc.	
Audit and General rate proceeding	Docket No. 02-BLVT-377-AUD
- JBN Telephone Company	
Audit and General rate proceeding	Docket No. 02-JBNT-846-AUD
<u>MAINE</u>	
- New England Telephone Company	



General rate proceeding

Docket No. 92-130

MARYLAND

- Chesapeake and Potomac Telephone Company
  - General rate proceeding Docket No. 7851
  - Cost Allocation Manual Case Case No. 8333
  - Cost Allocation Issues Case Case No. 8462
- Verizon Maryland
  - PICC rate case Case No. 8862
  - USF case Case No. 8745

MINNESOTA

- Access charge (all companies) Docket No. P-321/CI-83-203
- U. S. West Communications, Inc. (Northwestern Bell Telephone Co.)
  - Centrex/Centron proceeding Docket No. P-421/91-EM-1002
  - General rate proceeding Docket No. P-321/M-80-306
  - Centrex Dockets MPUC No. P-421/M-83-466
  - MPUC No. P-421/M-84-24
  - MPUC No. P-421/M-84-25
  - MPUC No. P-421/M-84-26
  - MPUC No. P-421/GR-80-911
  - MPUC No. P-421/GR-82-203
  - MPUC No. P-421/GR-83-600
  - WATS investigation MPUC No. P-421/CI-84-454
  - Access charge case MPUC No. P-421/CI-85-352
  - Access charge case MPUC No. P-421/M-86-53
  - Toll Compensation case MPUC No. P-999/CI-85-582
  - Private Line proceeding Docket No. P-421/M-86-508
- AT&T
  - Intrastate Interexchange Docket No. P-442/M-87-54

MISSISSIPPI

- South Central Bell
  - General rate filing Docket No. U-4415

MISSOURI

- Southwestern Bell
  - General rate proceeding TR-79-213
  - General rate proceeding TR-80-256
  - General rate proceeding TR-82-199
  - General rate proceeding TR-86-84
  - General rate proceeding TC-89-14, et al.
  - Alternative Regulation TC-93-224/TO-93-192
- United Telephone Company
  - Depreciation proceeding TR-93-181
- All companies
  - Extended Area Service TO-86-8
  - EMS investigation TO-87-131
  - Cost of Access Proceeding TR-2001-65

NEW JERSEY

- New Jersey Bell Telephone Company

General rate proceeding  
General rate proceeding  
  
Phase I - General rate case  
  
General rate case  
  
Division of regulated  
from competitive services  
Customer Request Interrupt

Docket No. 802-135  
BPU No. 815-458  
OAL No. 3073-81  
BPU No. 8211-1030  
OAL No. PUC10506-82  
BPU No. 848-856  
OAL No. PUC06250-84  
BPU No. TO87050398  
OAL No. PUC 08557-87  
Docket No. TT 90060604

#### NEW MEXICO

- U.S. West Communications, Inc.  
E-911 proceeding  
General rate proceeding  
General rate/depreciation proceeding  
Subsidy Case  
USF Case
- VALOR Communications  
Subsidy Case

Docket No. 92-79-TC  
Docket No. 92-227-TC  
Case No. 3008  
Case No. 3325  
Case No. 3223  
  
Case No. 3300

#### OHIO

- Ohio Bell Telephone Company  
General rate proceeding  
General rate increase  
General rate increase  
Access charges
- General Telephone of Ohio  
General rate proceeding
- United Telephone Company  
General rate proceeding

Docket No. 79-1184-TP-AIR  
Docket No. 81-1433-TP-AIR  
Docket No. 83-300-TP-AIR  
Docket No. 83-464-TP-AIR  
  
Docket No. 81-383-TP-AIR  
  
Docket No. 81-627-TP-AIR

#### OKLAHOMA

- Public Service of Oklahoma  
Depreciation case

Cause No. 96-0000214

#### PENNSYLVANIA

- GTE North, Inc.  
Interconnection proceeding
- Bell Telephone Company of Pennsylvania  
Alternative Regulation proceeding  
Automatic Savings  
Rate Rebalance
- Enterprise Telephone Company  
General rate proceeding
- All companies  
InterLATA Toll Service Invest.
- GTE North and United Telephone Company  
Local Calling Area Case

Docket No. A-310125F002  
  
Docket No. P-00930715  
Docket No. R-953409  
Docket No. R-00963550  
  
Docket No. R-922317  
  
Docket No. I-910010  
  
Docket No. C-902815

#### SOUTH DAKOTA

- Northwestern Bell Telephone Company  
General rate proceeding

Docket No. F-3375

TENNESSEE

(on behalf of Time Warner Communications)

- BellSouth Telephone Company  
Avoidable costs case Docket No. 96-00067

UTAH

- U.S. West Communications (Mountain Bell Telephone Company)
  - General rate case Docket No. 84-049-01
  - General rate case Docket No. 88-049-07
  - 800 Services case Docket No. 90-049-05
  - General rate case/  
incentive regulation Docket No. 90-049-06/90-  
049-03
  - General rate case Docket No. 92-049-07
  - General rate case Docket No. 95-049-05
  - General rate case Docket No. 97-049-08

VIRGIN ISLANDS, U.S.

- Virgin Islands Telephone Company
  - General rate case Docket No. 264
  - General rate case Docket No. 277
  - General rate case Docket No. 314
  - General rate case Docket No. 316

VIRGINIA

- General Telephone Company of the South
  - Jurisdictional allocations Case No. PUC870029
  - Separations Case No. PUC950019

WASHINGTON

- US West Communications, Inc.
  - Interconnection case Docket No. UT-960369
  - General rate case Docket No. UT-950200
- All Companies- Analyzed the local calling  
areas in the State

WISCONSIN

- Wisconsin Bell Telephone Company
  - Private line rate proceeding Docket No. 6720-TR-21
  - General rate proceeding Docket No. 6720-TR-34